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10 Attorneys for Plaintiff  
11 **AFSCME LOCAL 101**

12  
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **IN AND FOR THE COUNTY OF SANTA CLARA**  
15 **AT SAN JOSÉ**

16 **SAN JOSE POLICE OFFICERS'**  
17 **ASSOCIATION,**

18 Plaintiff,

19 v.

20 **CITY OF SAN JOSÉ, BOARD OF**  
21 **ADMINISTRATION FOR POLICE AND FIRE**  
22 **DEPARTMENT RETIREMENT PLAN OF**  
23 **CITY OF SAN JOSE, and DOES 1-10,**  
24 inclusive,

25 Defendants.

Consolidated Case No. 1-12-CV-225926

*[Consolidated with Case Nos. 1-12-CV-225928,  
1-12-CV-226570, 1-12-CV-226574,  
1-12-CV-227864, and 1-12-CV-233660]*

ASSIGNED FOR ALL PURPOSES TO:  
JUDGE PATRICIA LUCAS  
DEPARTMENT 2

**DECLARATION OF VISHTASP  
SOROUSHIAN IN SUPPORT OF AFSCME  
LOCAL 101'S OPPOSITION TO MOTION  
TO SUMMARY ADJUDICATION**

Hearing Date: June 7, 2013  
Hearing Time: 9:00 a.m.  
Courtroom: 2  
Judge: Hon. Patricia Lucas  
Complaint Filed: July 5, 2012  
Trial Date: June 17, 2013

26 **AND RELATED CROSS-COMPLAINT AND**  
27 **CONSOLIDATED ACTIONS**  
28

1 I, VISHTASP M. SOROUSHIAN, declare:

2 1. I am an associate attorney at Beeson, Tayer & Bodine and am one of the attorneys of record  
3 for Local 101 of the American Federation of State, County and Municipal Employees in the above-  
4 captioned case. I have personal knowledge of the facts set forth below and if called as a witness I  
5 could and would testify competently thereto.

6 2. On February 25, 2013, I propounded discovery on Necessary Party in Interest, Board of  
7 Administrators for the Federated City Employees' Retirement System ("Board"). Said discovery was  
8 limited to a Request for Production of Documents ("RPD").

9 3. In its Response to the RPD, the Board stated that I could make arrangements to inspect the  
10 responsive, non-privileged documents at the offices of the Department of Retirement Services  
11 ("Department") for the City of San José, located at 1737 N. 1<sup>st</sup> Street, Suite 580, San José, California  
12 95112.

13 4. I made arrangement to inspect documents at the Department and did so on Wednesday, April  
14 17, 2013, and Thursday, April 25, 2013.

15 5. During the course of my inspection, I reviewed the following memorandum from the former  
16 Director of Retirement Services, Russell U. Crosby, to the City Council and Mayor, dated January 9,  
17 2009. Upon request, a staff member of Retirement Services provided me with a photocopy of the  
18 document. Our office now maintains the memorandum in its regular course of business. I attached a  
19 true and correct copy of the memorandum as **Exhibit 1**.

20 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
21 true and correct and that I executed this declaration on May 1, 2013, in Oakland, California.

22  
23  
24  
25 By: 

26 VISHTASP M. SOROUSHIAN  
27  
28

## **EXHIBIT 1**

SENT TO COUNCIL: \_\_\_\_\_



## Memorandum

TO: HONORABLE MAYOR  
AND CITY COUNCIL

FROM: Russell U. Crosby

SUBJECT: STATUS OF FEDERATED SYSTEM'S  
SUPPLEMENTAL RETIREMENT BENEFIT

DATE: January 9, 2009

Approved \_\_\_\_\_

Date \_\_\_\_\_

### INFORMATIONAL

#### BACKGROUND

This memorandum provides additional information on the Supplemental Retiree Benefit Reserve program (the "SRBR") that was the subject of a San Jose Mercury News article on January 9, 2009. The article resulted from calls to the media from retirees concerned that they had not received their checks. The Department of Retirement Services delayed sending out these checks due to an administrative review of prior SRBR calculations and a determination that excessive transfers to the SRBR may have occurred in previous years and overpayment may have been made out of the SRBR. Current year checks have been delayed pending a full review and determination of the extent of any excessive transfers or overpayments, and options to correct the past problems. All affected retirees have been informed of the delay.

The SRBR in the Federated City Employees' Retirement System (FCERS) was established by the City Council in 1986, and was patterned on State legislation that had been adopted in 1983 to permit certain counties to allocate excess investment income earned by retirement fund assets to an account that would fund new, or supplemental, benefits for retirees. Other legislation, also adopted in the early 1980's provided for the establishment of similar supplement benefits accounts within the State Teachers' Retirement System and the Public Employees Retirement System.

Only the method of allocating funding to the SRBR is prescribed in the San Jose Municipal Code. This methodology has changed since 1986; in 2005 the City Council approved an ordinance consolidating the FCERS reserve funds and modifying the language concerning when and how excess earnings are transferred to the SRBR.

The methodology for distributing money from the Federated SRBR to retirees has never been set out in the San Jose Municipal Code. Between 1986 and 1999, only one distribution was made from the SRBR, and this was not a direct distribution, but rather was a use of the funds to pay for

three new benefits, including retiree medical benefits for a period of approximately two years. In 2000, Council adopted Resolution No. 69433 approving a distribution formula for direct payments from the SRBR to retirees in 2000, 2001 and 2002. In 2003, Council adopted Resolution No. 71870 approving a distribution methodology that was to be effective "until such time as the [FCERS] Board recommends a subsequent methodology and the Council adopts a resolution approving the subsequent methodology."

Under the current methodology, the total Annual Distribution from the Federated System SRBR is the sum of (a) the amount, if any, in excess of the Minimum Balance (\$7,000 per retiree or survivor) and (b) the annual interest earned in the SRBR as of June 30 in the year of distribution. For any year in which the actual balance in the SRBR as of June 30 in the year of distribution is less than or equal to the Minimum Balance, the total distribution for that year shall be limited to the annual interest earned in the SRBR. Recent prior year distributions have been in the range of \$1.0 million to \$1.5 million. The actual distribution to individual retirees varies, based on a point system methodology that is set out in the 2003 Council resolution. The points are assigned based on years of service and years retired.

Earlier this year I directed a review of the Federated System SRBR calculation and distribution process. Staff from the Department of Retirement Services, the City Attorney's office, and the Trustees' external legal counsel reviewed the entire process and all calculations against the Municipal Code. In that process three potential issues were identified as needing further investigation.

The SRBR issues, noted below apply to the Federated Plan only. The Federated SRBR calculation is performed by the Department of Retirement Services staff. The Police and Fire Department Retirement Plan ("P&F") SRBR calculation is prepared by the Segal Co, P&F's actuary. Given the findings related to the Federated System, a thorough review of the P&F SRBR calculations is planned for next year.

At the November 2008 Board meeting, both attorneys recommended that staff review the calculations further back in time to at least 1999 before making another SRBR distribution.

### ANALYSIS

Three issues are being investigated that could affect both the current balance in the SRBR and the proper amount of any current distribution, and whether overpayments have been made out of the SRBR in the past.

First, the 2005 ordinance integrating the Federated System pension plan reserve accounts, reduced the number from 7 to 3. From that point forward, the "Unrealized Gains and Losses Reserve Account" did not receive its appropriate level of earnings credit. According to Municipal Code section 3.28.340 (C) (3) (a) interest shall be credited to the General Reserve before there is any excess earnings transfer to the SRBR. The General Reserve includes an Unrealized Gain/Loss account which was created in 2005 within the General Reserve as part of the streamlining of the reserve accounts. The Unrealized Gain/Loss account should have been credited with interest but as staff discovered it had not been properly credited. This calculation

error caused the Federated SRBR balance to be overstated in 2006 and 2007, and would have caused an overpayment of 29% or about \$2.3 million for 2008.

Second, staff is also investigating whether an overpayment may have occurred in 2000 and/or 2001, when two relative large payments were made to retirees (\$6.6M, 2000; \$2.1M, 2001). Investigation of this potential overpayment and potential remedies is still underway.

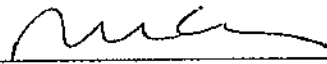
Third, staff is investigating whether the "Retiree Medical Benefits Account", has received its appropriate level of earnings credit for some period of time and whether any errors in earnings credited to this account affect the SRBR calculations

### CONCLUSION

Staff is still investigating the amount, if any, of prior excess transfers to the SRBR and any excess payments. If prior errors are identified, options for correction will be considered, taking into account the desire to minimize any impact on retirees. The actual distribution date and amount of the currently pending distribution are undetermined at this time. The Board has requested staff and legal counsel to present a report on the SRBR issues at their February 2009 Board meeting. As noted in the November 21, 2008, notice to the retirees, the SRBR delay is unrelated to the current economic situation or any City budget considerations. The delay in the 2008 distribution results from an administrative review that should take place on a regular basis, and in this case resulted in identification of these issues.

### COORDINATION

This memorandum has been coordinated with the City Manager's Office, the City Attorney's Office, and the Office of Employee Relations.

  
\_\_\_\_\_  
Russell U. Crosby, DIRECTOR  
Retirement Services



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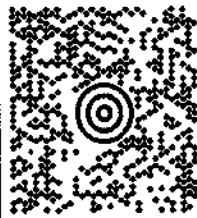


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